

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD E. GILLINGHAM,
MICHAEL M. FILIPOVICH, ROBERT ARMITAGE
and JOSEPH B. FRENCH

Appeal 2007-1490
Application 10/707,484¹
Technology Center 1700

Decided: June 12, 2007

Before JAMESON LEE, ADRIENE LEPIANE HANLON, and
SALLY C. MEDLEY, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Statement of the Case

Applicants appeal under 35 U.S.C. § 134 from a final rejection of claims 11, 12, and 14-21. We have jurisdiction under 35 U.S.C. § 6(b).

¹ Application for patent filed 17 December 2003. The real party in interest is Ford Global Technologies, LLC.

1 For the reasons that follow, Applicants have failed to demonstrate that
2 the Examiner's rejection is legally incorrect.

3 **C. Findings of fact ("FF")**

4 The record supports the following findings of fact as well as any other
5 findings of fact set forth in this opinion by at least a preponderance of the
6 evidence.

7 1. Applicants' claims 11, 12 and 14-21 are the subject of this appeal.

8 2. Claims 1² and 11 are as follows:

9 A method of manufacturing a headliner for a vehicle, said method
10 comprising the steps of:

11 providing vacuum forming equipment including upper and lower mold
12 halves;

13 providing thermoplastic material including at least one top and at least
14 one independent bottom layer;

15 placing said top and bottom layers into the vacuum forming equipment
16 adjacent forming surfaces of the upper and lower mold halves;

17 substantially sealing at least one of the upper and lower mold halves
18 from atmosphere;

19 joining said top and bottom layers together to form an integral
20 headliner; and

² Claims 1-10 were subject to restriction and were withdrawn from consideration (10/707,484, Sept. 16, 2005 nonfinal rejection).

1 applying vacuum to at least one of said top and bottom layers at
2 predetermined locations so as to form at least one cavity between said top
3 and bottom layers.

4 11. A headliner for a vehicle made by the method of claim 1, said top
5 and bottom layers including a plurality of surface contours, and said top and
6 bottom layers substantially joined together and including at least one area
7 there between defining said at least one cavity.

8 3. Claim 12 is as follows:

9 A headliner for a vehicle, said headliner comprising:

10 at least one top layer including a plurality of surface contours;

11 at least one bottom layer including a plurality of surface contours; and

12 said top and bottom layers being substantially joined together to form
13 an integral headliner including at least one area between inner surfaces
14 of said top and bottom layers defining a cavity, therein said top layer is
15 independent from said bottom layer prior to being joined to said
16 bottom layer.

17 4. The Examiner found that Carroll describes a top layer and a bottom
18 layer, which together define a cavity as recited in claim 11 and 12, along with
19 the various features recited in those claims that depend either directly or
20 indirectly from claim 12 (Final Rejection 3-4 and Answer 3-4).

21 5. For dependent claim 11, the Examiner concluded that it is a product
22 by process claim, the patentability of which does not depend on the method
23 of production, citing *In re Thorpe*, 777 F.2d 695, 698 (Fed. Cir. 1985) (Final
24 Rejection 4 and Answer 4 and 7).

1 6. Applicants argue claims 12 and 14-21 together as a group (Br. 4-6).

2 7. Applicants place much emphasis on the term “headliner” in its
3 claims and argue that Carroll does not disclose a headliner as follows:

4 To reiterate, Appellants are claiming a headliner. Carroll
5 et al., on the other hand does not disclose a headliner. Rather,
6 Carroll discloses an unfinished panel, which, according to
7 Carroll’s Claim 10, is intended to be attached to any, and used in
8 combination with a vast array of other structures, to form a
9 similarly vast array of other finished goods, one of which may
10 include a headliner ... Carroll et al. is devoted not to a headliner,
11 but to a structure which could be buried, for example, within the
12 core of a headliner. ... Although it is true that Carroll et al.
13 discloses an energy absorbing assembly, this alone does not
14 mean that Carroll et al. discloses a headliner for a vehicle. A
15 headliner, as noted in Appellants’ specification at paragraph 3,
16 includes a device mounted inside the passenger compartment of
17 a vehicle for providing an aesthetic covering for the roof’s sheet
18 metal and/or framework upon which the headliner is to be
19 mounted. Carroll et al. shows something that could be used
20 within a headliner but does not disclose a finished headliner, nor
21 does Carroll et al. disclose any completed structure for a
22 headliner. (Br. 5).

23
24 8. The Examiner responded and concluded that the term “headliner”
25 recited in the preamble of claim 12 is not limiting to that claim and that
26 Carroll describes all of the structural components of claims 12 and 14-21,
27 citing *Pitney Bowes, Inc. v. Hewlett-packard Co*, 182 F.3d 1298, 1305, 51
28 USPQ2d 1161, 1165 (Fed. Cir. 1999) (Answer 5-6).

29 9. The following description is found in the background section of
30 Applicants’ Specification: “Various conventional headliner designs and their

1 associated methods of manufacture are known and disclosed, for example,
2 2002/0017805 to Carroll, III ...” (10/707,484 para. 9).

3 10. Applicants’ argue that claim 11 is patentable for the similar
4 arguments advanced in connection with claims 12 and 14-21 and further
5 argues that:

6 Moreover, *Carroll et al.* does not teach a structure which is
7 vacuum formed and has independent top and bottom layers
8 joined together to form an integral headliner. Moreover, the
9 Examiner has not adduced any evidence to support a conclusion
10 of obviousness. For this reason, as well as for the previously
11 cited reasons, *Carroll et al.* cannot comprise a colorable basis
12 for the rejection of Applicants’ Claim 11. (Br. 7).
13

14 **D. Principles of Law**

15 Claim interpretation is a question of law, but the subordinate findings
16 relating to proper claim construction are issues of fact. Claim elements must
17 be construed as they would be understood by those skilled in the art. *See*
18 *Hoechst Celanese Corp. v. B.P. Chems., Ltd.*, 78 F.3d 1575, 1578, 38
19 USPQ2d 1126, 1129 (Fed. Cir. 1996).

20 **E. Analysis**

21 Claim 12 is in independent form and claims 14-21 depend either
22 directly or indirectly on claim 12. Claim 12 recites the term “headliner” in
23 the preamble and again in the body of the claim. The Examiner concluded
24 that the term “headliner” should not be given any patentable weight since it is
25 recited in the preamble and it is an intended use limitation (FF 8).

1 Applicants argue claims 12 and 14-21 as a group (FF 6). Applicants'
2 sole argument is that the claim 12 limitation "headliner" should be
3 interpreted to mean a finished product, e.g., a device that can be mounted
4 inside a vehicle for providing an aesthetic covering for the roof's sheet metal
5 and/or framework (FF 7). Applicants' proposed claim construction is
6 narrower than the Examiner's proposed claim construction. Here, we need
7 not decide who is right. Based on the record, even if the claim 12
8 "headliner" is interpreted to mean a structure that has a finished appearance,
9 the Applicants have failed to sufficiently demonstrate that the Examiner's
10 findings with respect to Carroll are erroneous.

11 Applicants' position that it takes in connection with its appeal is
12 directly contrary to Applicants' position advanced earlier. In its background
13 section of its Specification, Applicants state that "Various conventional
14 headliner designs and their associated methods of manufacture are known
15 and disclosed" citing specifically to the Carroll 2002/0017805 publication
16 (FF 9). However, in its Appeal Brief, Applicants argue that Carroll does not
17 describe a finished headliner (FF 7). Applicants provide no explanation for
18 the contradictory positions it appears to take. The background section of
19 Applicants' own Specification leads one to understand that the Applicants
20 considered and understood Carroll to describe a "conventional", e.g.,
21 "finished" headliner. To advance a position before the Board that appears to
22 be in direct contrast to earlier representations made, without any explanation,
23 is troubling.

1 Moreover, even if the Carroll top and bottom layer assembly constitute
2 an “unfinished panel,” which Applicants argue cannot by itself be a
3 “headliner” as that term is understood in the art, Applicants acknowledge that
4 Carroll describes that the “unfinished panel” can be contained within, or
5 included as part of a headliner (FF 7). According to Applicants, the term
6 “headliner” is known in the art to mean a finished product, e.g., something
7 that is aesthetically pleasing to view. By Applicants’ own admission, the
8 term “headliner” would connote to a skilled artisan a finished product. Thus,
9 Applicants’ argument that Carroll does not describe a “finished product”
10 necessarily unravels. Carroll describes using the assembly within a
11 headliner, which one of ordinary skill in the art would recognize inherently
12 contains all of the necessary structure to make it a “finished product.”
13 Applicants have therefore failed to demonstrate that the Examiner’s rejection
14 was in error.

15 In any event, aesthetics is in the eye of the beholder. The applicant
16 submitted no testimony of any technical witness to the effect that one with
17 ordinary skill in the art would regard a “headliner” as necessarily being a
18 finished panel. Attorney argument does not take the place of evidence
19 lacking in the record. Even an unfinished panel as disclosed in Carroll has
20 all the structural requirements of being a headliner.

21 For the above reasons, we sustain the rejection of claims 12 and 14-21
22 as being anticipated by Carroll.

23 The Applicants do not sufficiently explain why the Examiner’s legal
24 conclusion with respect to claim 11 is erroneous. The Examiner clearly

1 stated that claim 11 is a product by process claim, the patentability of which
2 does not depend on the method of production, citing *In re Thorpe*, 777 F.2d
3 695, 698 (Fed. Cir. 1985) (FF 5). Applicants provide no meaningful
4 explanation why the Examiner's conclusion is erroneous (FF 10). Thus, we
5 also sustain the rejection of claim 11 as being anticipated, or alternatively
6 obvious in view of Carroll.

7 Since we have determined that the claims are unpatentable on the basis
8 of Carroll, we need not and will not consider the rejection based on
9 Wandyez. Accordingly, the rejection of claims 11, 12 and 14-21 based on
10 Wandyez is dismissed as moot.

11 **E. Decision**

12 Upon consideration of the record, and for the reasons given, the
13 Examiner's rejection of claims 12 and 14-21 under 35 U.S.C. § 102(b) as
14 being anticipated by Carroll is affirmed.

15 The Examiner's rejection of claim 11 under 35 U.S.C. § 102(b) or
16 alternatively under 35 U.S.C. § 103(a) based on Carroll is affirmed.

17 No time period for taking any subsequent action in connection with
18 this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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Application 10/707,484

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